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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,282	02/17/2004	Donald W. Mitchell	04-Mitchell-001	2047
23843	7590	05/10/2007		
FOOTHILL LAW GROUP 777 N. FIRST STREET, SUITE325 SAN JOSE, CA 95112			EXAMINER HWANG, VICTOR KENNY	
			ART UNIT	PAPER NUMBER
			3764	
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			05/10/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/781,282	Applicant(s) MITCHELL, DONALD W.	
	Examiner Victor K. Hwang	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,6,8,12,13,15,16 and 18-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,7,9-11,14 and 17 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                   |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                              | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/5/2004</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Invention I and Species C in the reply filed on February 4, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 2, 3, 6, 8, 12, 13, 15, 16 and 18-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 4, 2007. The limitations of claim 4 closely resembles the elected species and has been indicated by the applicant as reading on the elected species, and therefore has been considered by the examiner.

### *Drawings*

3. The drawings are objected to because the reference character "10" lacks a lead line in the drawing of Fig. 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the

remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "kit" for assembly (claims 14 and 17); and the first rotary bearing including two opposed cup structures, each structure including a hollow cylinder closed at one end by a curved surface (claim 4) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification does not disclose that the first rotary bearing includes two opposed cup structures, each structure including a hollow cylinder closed at one end by a curved surface (claim 4). The specification appears to disclose only one of the two opposed structures including a hollow cylinder 206 closed at one end by a curved surface 216. The other cup structure disclosed is a fixed shaft 204 of wood, metal or hard plastic, with a curved surface part 218 press fit over the fixed shaft 204.

6. The disclosure is objected to because of the following informalities: on page 10, line 10, the recitation "216" presumably should be changed to --218--.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 5, 7, 9-11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Mara* (US Pat. 5,458,552) in view of *Stand Alone Spinning Wing Chun Dummy* (advertisement in KUNG FU Magazine, Fall 2002, pg. 53). *Mara* discloses a free-standing martial arts training device 10 comprising a base 12,14, an elongate shaft 16, and a plurality of padded arms 20 extending from the shaft along its length and about its perimeter. The shaft 16 has a plurality of apertures 22 along its length and about its four sides to which the padded arms 20 are selectively secured. The padded arms 20 may extend at approximately a right angle from the shaft 16 or may extend at an angle relative to the shaft 16. The padded arms 20 are shown extending from the shaft 16 at four different heights and into all four quadrants around the shaft. The padded arms 20 may be configured at various heights, in different numbers and in different angular positions (col. 2, lines 3-16). The device may be configured with only four arms, each arm at a different height, each arm extending in a different direction and extending at a right angle relative to the shaft.

*Mara* does not disclose a rotary bearing supported by the base, the rotary bearing supporting the elongate shaft at an end thereof such that the shaft is capable of 360 degree rotation.

The *Stand Alone Spinning Wing Chun Dummy* discloses a martial arts training device comprising a base, a vertical, elongate shaft supported by the base, and a plurality of arms extending from the elongate shaft. The dummy rotates when struck so as to seem to "strike back." The spinning dummy is an excellent way to maximize training.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the martial arts training device of *Mara* with a rotary bearing, so that the shaft and arms can rotate when struck so as to seem to strike back and maximize training, as taught by the *Stand Alone Spinning Wing Chun Dummy*.

With regard to claim 14, the padded arms of *Mara* in view of the *Stand Alone Spinning Wing Chun Dummy* are capable of being mounted in a variety of configurations on the elongate shaft and is considered to satisfy the preamble recitation of a kit.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Mara* (US Pat. 5,485,552) in view of *Stand Alone Spinning Wing Chun Dummy* (advertisement in KUNG FU Magazine, Fall 2002, pg. 53) as applied to claim 14 above, and further in view of *Makarov et al.* (RU 2019230 C1). *Mara* in view of the *Stand Alone Spinning Wing Chun Dummy* discloses the invention as claimed except for the base including a fixed shaft attachable to the base such that it cannot rotate, and wherein the elongate shaft is hollow and fits over the fixed shaft.

*Makarov et al.* discloses a rotary bearing for a training device comprising base 1 having a vertical shaft 2 fixed thereto. A plurality of cantilever arms 7 carrying targets 8 are rotatable relative to the base and shaft. The cantilever arms extend from a hollow cylindrical shaft 4,5,6 that fit over the shaft 2 and are rotatable with respect to the shaft 2 and base. Bushings 10,11, bearing rings 17 and bearings 18 permit the hollow shaft 4,5,6 sections to rotate relative to the shaft 2. The rotating targets increases the efficiency of fight training.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the training device of *Mara* in view of the *Stand Alone Spinning*

*Wing Chun Dummy* with a fixed shaft and hollow elongate shaft to fit over the fixed shaft, since *Makarov et al.* disclose such a rotary bearing for permitting arms and targets of a fight training device to rotate relative to a base and the use of this known equivalent would have been obvious option.

### ***Allowable Subject Matter***

10. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose a rotary bearing including two opposed cup structures, each structure including a hollow cylinder closed at one end by a curved surface.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*McKenzie* (US Pat. 825,860), *Weiler* (US Pat. 1,564,734), *Adams* (US Pat. 2,435,864), *Noftsingher* (US Pat. 2,696,383), *Lacy* (US Pat. 3,096,979), *Woodsum, Jr.* (US Pat. 3,268,223), *Lee* (US Pat. 4,889,246), *Zagata, Jr.* (US Pat. 5,389,057), *Pratchett* (US Pat. 5,679,103), *Haselrig* (US Pat. 6,872,171 B2), *Melvin* (US Pat. App. Pub. No. 2005/0124469 A1), *Livingstone et al.* (US Pat. 2006/0025284 A1), *Fields et al.* (US Pat. 7,086,997 B1), *MacKay et*



*al.* (US Pat. 7,150,700 B2), *Costes et al.* (FR 2,763,251 A1) and *Stevenson* (WO 2004/096381

A1) disclose devices having structure relevant to the claimed invention.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.


The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cary O'Connor can be reached on (571) 272-4715.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor K. Hwang  
May 7, 2007

  
Cary E. O'Connor  
Primary Examiner